

IC 22-3-5

Chapter 5. Worker's Compensation: Insurance Requirements

IC 22-3-5-1

Requirements; self-insurance; security; fees

Sec. 1. (a) Every employer under IC 22-3-2 through IC 22-3-6, except those exempted by IC 22-3-2-5, shall:

- (1) insure and keep insured the employer's liability under IC 22-3-2 through IC 22-3-6 in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or
- (2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay direct the compensation in the amount and manner and when due as provided in IC 22-3-2 through IC 22-3-6.

(b) Under subsection (a)(2) the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred. The board shall charge the following:

- (1) An initial application fee of five hundred dollars (\$500) to be paid along with the proof of financial ability required under this section.
- (2) A renewal fee of two hundred fifty dollars (\$250) if the employer holds a certificate of self insurance.
- (3) A late filing fee of two hundred fifty dollars (\$250).

(Formerly: Acts 1929, c.172, s.68.) As amended by P.L.144-1986, SEC.50; P.L.28-1988, SEC.42; P.L.170-1991, SEC.12.

IC 22-3-5-2

Termination of insurance; filing fees; evidence of compliance

Sec. 2. An employer required to carry insurance under IC 22-3-2-5 and section 1 of this chapter shall file with the worker's compensation board, in the form prescribed by the board, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with section 1 of this chapter and other provisions relating to the insurance under IC 22-3-2 through IC 22-3-6 and shall pay a filing fee in the amount of:

- (1) ten dollars (\$10) before July 1, 1992;
- (2) five dollars (\$5) on and after July 1, 1992, and before July 1, 1995; and
- (3) two dollars (\$2), after July 1, 2013.

This filing fee shall be deposited in the worker's compensation supplemental administrative fund established by section 6 of this chapter and used to offset a part of the board's expenses related to the administration of health care provider reimbursement disputes. Proof of renewal of an existing insurance policy may be filed every three (3) years, but the filing fee for the policy shall be paid annually. An employer coming under the compensation provisions of IC 22-3-2 through IC 22-3-6 shall in a like manner file like evidence of

compliance on the employer's part.

(Formerly: Acts 1929, c.172, s.69; Acts 1937, c.214, s.6.) As amended by Acts 1978, P.L.2, SEC.2211; P.L.28-1988, SEC.43; P.L.170-1991, SEC.13; P.L.275-2013, SEC.8.

IC 22-3-5-2.5

Proof of compliance; notice; civil penalty; Internet posting

Sec. 2.5. (a) The worker's compensation board is entitled to request that an employer provide the board with current proof of compliance with section 2 of this chapter.

(b) If an employer fails or refuses to provide current proof of compliance by the tenth day after the employer receives the board's request under subsection (a), the board:

(1) shall send the employer a written notice that the employer is in violation of section 2 of this chapter; and

(2) may assess a civil penalty against the employer of fifty dollars (\$50) per employee per day.

(c) An employer may challenge the board's assessment of a civil penalty under subsection (b)(2) by requesting a hearing in accordance with procedures established by the board.

(d) The board shall waive a civil penalty assessed under subsection (b)(2) if the employer provides the board current proof of compliance by the twentieth day after the date the employer receives the board's notice under subsection (b)(1).

(e) If an employer fails or refuses to:

(1) provide current proof of compliance by the twentieth day after the date the employer receives the board's notice under subsection (b)(1); or

(2) pay a civil penalty assessed under subsection (b)(2);

the board may, after notice to the employer and a hearing, order that the noncompliant employer's name be listed on the board's Internet web site.

(f) A noncompliant employer's name may be removed from the board's Internet web site only after the employer does the following:

(1) Provides current proof of compliance with section 2 of this chapter.

(2) Pays all civil penalties assessed under subsection (b)(2).

(g) The civil penalties provided for in this section are cumulative.

(h) Civil penalties collected under this section shall be deposited in the worker's compensation supplemental administrative fund established by section 6 of this chapter.

As added by P.L.168-2011, SEC.9.

IC 22-3-5-3

Self-insurance; certificates; revocation

Sec. 3. (a) Whenever an employer has complied with the provisions of section 1 of this chapter relating to self-insurance, the worker's compensation board shall issue to such employer a certificate which shall remain in force for a period fixed by the board, but the board may upon at least ten (10) days notice and a

hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the board may grant a new certificate to the employer upon the employer's petition and satisfactory proof of financial ability.

(b) All such certificates issued by the industrial board before May 21, 1929, shall remain in force for the period for which they were issued unless revoked as in this section provided.

(Formerly: Acts 1929, c.172, s.70.) As amended by P.L.144-1986, SEC.51; P.L.28-1988, SEC.44.

IC 22-3-5-4

Substitute system of insurance

Sec. 4. (a) Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by IC 22-3-2 through IC 22-3-6. No such substitute system shall be approved unless it confers benefits upon injured employees and their dependents at least equivalent to the benefits provided by IC 22-3-2 through IC 22-3-6, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under IC 22-3-2 through IC 22-3-6 at least commensurate with such contributions.

(b) Such substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties if it appears that the same is not fairly administered, its operation discloses latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of IC 22-3-2 through IC 22-3-6. In this case the board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

(Formerly: Acts 1929, c.172, s.71.) As amended by P.L.144-1986, SEC.52; P.L.28-1988, SEC.45.

IC 22-3-5-5

Policy provisions; failure to pay claims

Sec. 5. (a) No insurer shall enter into or issue any policy of insurance under IC 22-3-2 through IC 22-3-6 until its policy form shall have been submitted to and approved by the department of insurance.

(b) All policies of insurance companies and of reciprocal insurance associations insuring the payment of compensation under IC 22-3-2 through IC 22-3-6 are conclusively presumed to cover all the employees and the entire compensation liability of the insured. Any provision in any policy attempting to limit or modify the liability of the company or association issuing the same shall be wholly void.

(c) Every policy of any such company or association is deemed to

include the following provisions and any change in the policy which may be required by any statute enacted after May 21, 1929, as fully as if they were written in the policy:

(1) Except as provided in section 5.5 of this chapter, the insurer hereby assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits imposed upon or accepted by the insured under the provisions of IC 22-3-2 through IC 22-3-6.

(2) This policy is made subject to IC 22-3-2 through IC 22-3-6 relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits to and for the employees, the acceptance of such liability by the insured, the adjustment, trial, and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits, and the liability of the insurer to pay the same are and shall be a part of this policy contract as fully and completely as if written in this policy.

(3) As between this insurer and the employee, notice to or knowledge of the occurrence of the injury on the part of the insured (the employer) shall be notice or knowledge thereof, on the part of the insurer. The jurisdiction of the insured (the employer) for the purpose of IC 22-3-2 through IC 22-3-6 shall be the jurisdiction of this insurer. This insurer shall in all things be bound by and shall be subject to the awards, judgments, and decrees rendered against the insured (the employer) under IC 22-3-2 through IC 22-3-6.

(4) This insurer will promptly pay to the person entitled to the same all benefits conferred by IC 22-3-2 through IC 22-3-6, including physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, and all installments of compensation or death benefits that may be awarded or agreed upon under IC 22-3-2 through IC 22-3-6. The obligation of this insurer shall not be affected by any default of the insured (the employer) after the injury or by any default in giving of any notice required by this policy, or otherwise. This policy is a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital supplies, charges for burial compensation, or death benefits, and shall be enforceable in the name of the person.

(5) Any termination of this policy by cancellation shall not be effective as to employees of the insured covered hereby unless at least ten (10) days prior to the taking effect of such cancellation, a written notice giving the date upon which such termination is to become effective has been received by the worker's compensation board of Indiana at its office in Indianapolis, Indiana.

(6) This policy shall automatically expire one (1) year from the

effective date of the policy unless:

(A) the policy covers a period of three (3) years, in which event, it shall automatically expire three (3) years from the effective date of the policy;

(B) the policy is issued as a continuous policy, in which event it shall not expire until terminated by the insured or the insurer in accord with applicable state law and applicable policy provisions; or

(C) the policy covers a period permitted in bureau rules under IC 27-7-2-20.

The termination of a policy, as provided in this subdivision, shall be effective as to the employees of the insured covered by the policy.

(d) All claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the worker's compensation board may be made against either the employer or the insurer or both. If any insurer shall fail or refuse to pay final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail or refuse to comply with any provision of IC 22-3-2 through IC 22-3-6, the board shall not accept any further proofs of insurance from it until it shall have paid the award or judgment or complied with the violated provision of IC 22-3-2 through IC 22-3-6.

(Formerly: Acts 1929, c.172, s.72; Acts 1943, c.247, s.1; Acts 1959, c.371, s.1; Acts 1961, c.242, s.1.) As amended by P.L.144-1986, SEC.53; P.L.28-1988, SEC.46; P.L.3-1989, SEC.133; P.L.249-1989, SEC.18; P.L.170-1991, SEC.14; P.L.1-1994, SEC.109; P.L.116-1994, SEC.2; P.L.2-1995, SEC.83; P.L.217-1995, SEC.1; P.L.275-2013, SEC.9.

IC 22-3-5-5.5

Deductibles and co-insurance

Sec. 5.5. (a) Each insurer entering into or issuing an insurance policy under IC 22-3-2 through IC 22-3-7 may, as a part of the policy or as an optional endorsement to the policy, offer deductibles or co-insurance, or both, that are optional to the insured for benefits under IC 22-3-2 through IC 22-3-7. Each insurer may do the following:

(1) Offer deductibles in multiples of five hundred dollars (\$500), up to a maximum of five thousand dollars (\$5,000) per compensable claim.

(2) Offer co-insurance for each compensable claim. The following apply to co-insurance provided under this subdivision:

(A) The co-insurance must require the insurer to pay eighty percent (80%) and the insured to pay twenty percent (20%) of the amount of benefits due to an employee for an injury compensable under IC 22-3-2 through IC 22-3-7.

(B) An insured employer may not be required to pay more

than four thousand two hundred dollars (\$4,200) in co-insurance under this subdivision for each compensable claim.

(b) An insurer shall fully disclose in writing to prospective policyholders the deductibles and co-insurance offered under subsection (a). An insured employer who chooses a deductible under subsection (a):

- (1) may choose only one (1) deductible amount; and
- (2) is liable for the amount of the deductible for benefits paid for each compensable claim of an employee under IC 22-3-2 through IC 22-3-7.

(c) An insurer shall do the following:

- (1) Where a policy provides for a deductible, the insurer shall:
 - (A) pay all or a part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical service provider entitled to the benefits under IC 22-3-2 through IC 22-3-7; and
 - (B) seek reimbursement from the employer from the applicable deductible.
- (2) Where a policy provides a deductible or co-insurance, the insurance company shall pay the full cost of the claim. The insurance company shall seek reimbursement from the insured employer for its portion of the liability following closing of the claim or when twenty percent (20%) of the benefits paid exceed four thousand two hundred dollars (\$4,200).

(d) The payment or nonpayment of a deductible or co-insurance amount by an insured employer to the insurer shall be treated under the policy insuring the liability for worker's compensation in the same manner as payment or nonpayment of premiums is treated.

(e) The premium reduction for deductibles or for co-insurance shall be determined before the application of any experience modifications, premium surcharges, or premium discounts. The applicable premium reduction percentage is the percentage corresponding to the appropriate deductible or co-insurance amount. The premium reduction is obtained by the application of the appropriate reduction percentage, shown under miscellaneous values in the rate pages, to the premium determined before application of any experience or schedule modification, premium discounts, or any retrospective rating plan.

(f) This section does not apply to the following:

- (1) An employer that is authorized to self-insure against liability for claims under IC 22-3-2 through IC 22-3-6.
- (2) Group self-insurance funds for claims under IC 22-3-2 through IC 22-3-6.

(g) A deductible or co-insurance provided under this section applies against the total of all benefits paid for a compensable claim, including benefits paid under the following:

- (1) IC 22-3-3-4.
- (2) IC 22-3-3-8 through IC 22-3-3-10.
- (3) IC 22-3-3-17.

(4) IC 22-3-3-22.

(h) An employer may not use the employer's election of a deductible or co-insurance under this section or the payment of a deductible or co-insurance under this section in negotiating with the employer's employees on any terms of employment. An employee of an employer that knowingly violates this subsection may file a complaint with the department of labor. The department of labor may impose a civil penalty of not more than one thousand dollars (\$1,000) against an employer that knowingly violates this subsection.

(i) This subsection applies to an employee of an employer that has paid a deductible or co-insurance under this section and to the employee's dependents. If an employee or a dependent recovers damages against a third party under IC 22-3-2-13, the insurer shall provide reimbursement to the insured equal to a pro-rata share of the net recovery by the insurer.

As added by P.L.170-1991, SEC.15. Amended by P.L.275-2013, SEC.10.

IC 22-3-5-6

Supplemental administrative fund

Sec. 6. (a) The worker's compensation supplemental administrative fund is established for the purpose of carrying out the administrative purposes and functions of the worker's compensation board.

(b) The fund consists of:

- (1) fees collected from employers under sections 1 through 2 of this chapter;
- (2) fees collected under IC 22-3-2-14.5, IC 22-3-3-5(d), IC 22-3-7-17(g), and IC 22-3-7-34.5; and
- (3) civil penalties assessed under IC 22-3-4-15, section 2.5 of this chapter, and IC 22-3-7-34.3.

(c) The fund shall be administered by the worker's compensation board. Money in the fund is annually appropriated to the worker's compensation board and shall be used for all expenses incurred by the worker's compensation board.

(d) The money in the fund is not to be used to replace funds otherwise appropriated to the board. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

As added by P.L.170-1991, SEC.16. Amended by P.L.75-1993, SEC.4; P.L.202-2001, SEC.6; P.L.168-2011, SEC.10.